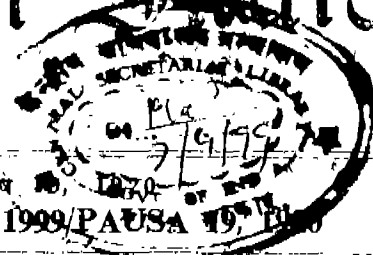




# भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY



सं. 2] नई दिल्ली, शनिवार, जनवरी 9, 1999/वी. 2, 1999  
No. 2] NEW DELHI, SATURDAY, JANUARY 9, 1999/PAUSA 49, 1999

इस भाग में सिर्फ पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों द्वारा (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 28 दिसम्बर, 1998

आ. अ. 10—भारत निर्वाचन आयोग लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, 1998 की निर्वाचन अर्जी सं. 3 में तारीख 17-11-1998 का केरल उच्च न्यायालय का निर्णय एतद्वारा प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/केरल-लो.स. 3/98]

आदेश से,  
बाबू राम, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 28th December, 1998

O.N. 10.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement of the High Court of Kerala dated 17-11-1998 in Election Petition No. 3 of 1998.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

The Hon'ble Mr. Justice S. Krishnan Unni.

Tuesday, the 17th November 1998

Election Petition No. 3 of 1998

Petitioner :

K. Anandagopan, Advocate, Thiruvalla, residing at 'Chaithanya', Vallamkulam P.O., Thiruvalla, Pathanamthitta District. By Advs. M/s. Pirappancode V. Sreedharan Nair, S. P. Aravindakshan Pillai & Pirappancode V. S. Sudheer.

Respondents :

1. Professor P. J. Kurian, Pallathu Veedu, Paduthodu P.O., Vennikulam, Pathanamthitta District.
2. Rajan Moolaveettil, Moolaveettil Pallath, Pandanad (North) P.O., Kallisserry, Alappuzha District.

3. K. Sasikumar, Thottapattu Veedu, Vazhamuttam, Vallikodu, V. Kottayam P.O., Pathanamthitta District.
4. C. S. Kanakambaran, Chandra Nivas, Angadikkal P.O., Chengannur, Allappuzha District.
5. Professor Nainan Koshy, 4A Wilcrest Points, Golf Links Road, Thiruvananthapuram, Pin-695041.
6. The Returning Officer, 16 Mavelikkara House of the People Constituency (District Collector, Pathanamthitta).
7. Assistant Returning Officer, 104 Kayamkulam Legislative Assembly Constituency in 16 Mavelikkara House of the People Constituency (The District Planning Officer, Civil Station, Alappuzha, Pin-688001).
8. The Assistant Returning Officer, 108 Chengannur Legislative Assembly Constituency in 16 Mavelikkara House of the People Constituency (Revenue Divisional Officer, Chengannur).
9. The Assistant Returning Officer, 105 Thiruvalla Legislative Assembly Constituency in 16 Mavelikkara House of the People Constituency (Sub Collector, Thiruvalla).
10. The Assistant Returning Officer, 107 Aranmula Legislative Assembly Constituency in 16 Mavelikkara House of the People Constituency (Deputy Collector (Land Reforms), Pathanamthitta).
11. The Assistant Returning Officer, 109 Mavelikkara Legislative Assembly Constituency in 16 Mavelikkara House of the People Constituency (Asst. Development Commissioner, Alappuzha).
12. The Asst. Returning Officer, 110 Pandalam Legislative Assembly Constituency in 16 Mavelikkara House of the People Constituency (District Supply Officer, Alappuzha).
13. The Assistant Returning Officer, 106, Kallappara Legislative Assembly Constituency in 16 Mavelikkara House of the People Constituency (Deputy Collector (Land Acquisition and Revenue Recovery), Pathanamthitta).

(Respondents 6 to 13 are removed from party array vide order dt. 13-8-1998 on CMP 5189/98).

R1 by Sr. Adv. Sri T. R. Raman Pillai & Advs. M/s. Varghese P. Thomas & T. R. Ramachandran Nair.

R2 by Adv. Sri George Cherian.

R5 by Advs. M/s. Mahew Zachariah Koshy George.

This Election Petition having been finally heard on 26-9-1998; the Court on 17-11-1998 passed the following:

S. Krishnan Umni. J.

.....  
Election Petition No. 3 of 1998:

AND

C.M.P. No. 4642 of 1998  
.....

Dated this the 17th November, 1998

### ORDER

This is an Election Petition challenging the election of the 1st respondent to No. 16 Mavelikkara House of People Constituency in the general elections held on 28-2-1998. Petitioner is a voter in the said Constituency and also election agent of the 5th respondent who was the contesting rival candidate of the 1st respondent. In the said election, the 1st respondent secured 275001 votes and was declared elected by a margin of 1261 votes over his rival, the 5th respondent who secured 273740 votes. This Election Petition filed under Section 81 of the Representation of the People Act, 1951 (for short, the R.P. Act) challenges the election of the 1st respondent on the ground that there were grave irregularities in counting of votes in all counting stations, that votes cast in favour of the 5th respondent were actually placed in the bundles in favour of the 1st respondent, that inspite of a request made to the authorities for recounting (Annexure-III), it was not done but was rejected (Annexure IV) and that at the last minute the officers at the counting tables were changed in order to help the 1st respondent. In addition to the above, it is alleged that 'corrupt practices' as defined in Section 123 of the R.P. Act were committed by making a religious appeal to influence the voters in favour of the 1st respondent. Instances are given in paragraphs 17 to 21. They are:

- (i) A public statement was made by Metropolitan of the Mar Thoma Church on 22-2-1998, the final day of the Maramon Convention, that a representative of the Mar Thoma Church should be in the Parliament. Such a statement was made with the consent of the 1st respondent, the only candidate belonging to that faith contesting Parliamentary Elections. The relevant extract from Mathrubhumi daily dated 23-2-1998 is produced as Annexure-VII.

(ii) One T. D. Mathew, Executive Member, C.S.I. Madhya Kerala Maha Edavaka and Sunny Kanjiram (Ex-Chairman) Parivarthitha Ksisthava Vikasana Corporation, Kerala issued a statement on 15-2-1998 calling upon Dalit Christians to vote for the 1st respondent on the ground that he was champion of their cause; the relevant statement is produced as Annexure-VIII.

(iii) Malayala Manorama daily dated 27-2-1998 carried the photographs showing the 1st respondent standing along with Madathipathi of Kidanganloor Vijayanadasramam and Matha Guru Poornimamayil of the Ashramam (Annexure-IX).

(iv) In Malayala Manorma daily dated 25-2-1998, Kottayam Edition, a photograph was published showing the 1st respondent standing along with pastor T. S. Abraham, General Secretary of India, Pentacost Church of God and M. T. Chacko, Senior Brethren Church (Annexure-X).

(v) Smt. Mary Thomas Madolil, President, District Panchayat, Pathanamthitta had addressed letters to voters on behalf of 1st respondent as shown in Annexure-XI, appealing to vote for him, for which she has used her official designation and letter pads.

(vi) Accounts of expenses submitted by the 1st respondent are incorrect and he had incurred more expenses than what is permitted by law.

2. The 5th respondent, the candidate who lost in the elections, filed a written statement supporting the allegations of the petitioner.

3. The 1st respondent denied the allegations of irregularities in counting and with regard to incurring of expenses. He also denied the corrupt practices alleged against him and stated that if any statements were made, it was not done with his consent.

4. C.M.P. No. 4642 of 1998 is filed by the 1st respondent praying that the Election Petition may be dismissed at the threshold for defective verification of pleadings and affidavit as well as for defective attestation of the copies served on him and non-disclosure of cause of action.

5. Six issues were framed and issues 1 and 2 were heard as preliminary issues. Issues 1 and 2 are as follows :

“(1) Whether the Election Petition is defective for non-conformity with Sections 81(3)

and 83(1)(c) of the Representation of the People Act, 1951 and whether it is liable to be dismissed in limine?

(2) Whether the allegations made in paragraphs 5 to 25 of the Petition are deficient in material facts and full particulars and the Election Petition is liable to be dismissed for want of disclosure of a cause of action?”

6. Issue No. 1 :—The defects alleged are as follows :

(i) The verification of the pleadings towards the end at page 33 of the Paper Book does not contain the date and place of verification.

(ii) The verification does not specify with regard to the numbered paragraphs of the pleadings, what the petitioner verifies of his own knowledge and what he verifies upon information and which he believes to be true, as required by Order 6 of Rule 15(2) and (3) of the Code of Civil Procedure.

(iii) The affidavit supporting the Election Petition is dated 18-5-1998 whereas the Election Petition is dated 19-5-1998. In as much as the affidavit is an integral part of the contents of any Election Petition under the proviso to Section 83(1) of the R.P. Act, the difference in dates would render it no affidavit at all and therefore the Election Petition is defective under Section 81 and is liable to be dismissed in limine.

(iv) In Ext. B1 copy served on the 1st respondent, there is no verification by the petitioner that it is a true copy. It contains only the signature of the petitioner and his counsel. After the verification in the Election Petition, there is no such verification as true copy towards the end of the affidavit. The affidavit and the Election Petition bear two dates and they cannot be taken as integral part of the same document. Therefore, Ext. B1 cannot be considered to be a true copy served on the 1st respondent and the Election Petition is liable to be rejected on this ground at the threshold.

Defects in Verification :

7. Section 83 lays down as to what shall be the contents of Election Petition : (a) it shall contain a concise statement of the material facts on which the petitioner relies; (b) it shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed

such corrupt practice and the date and place of commission of each such practice; (c) it shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for verification of pleadings, provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as prescribed for the petition. Rule 94-A of the Conduct of Elections Rules, 1961 lays down that the affidavit referred to in the proviso to sub-section (1) of Section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25. A look at Form 25 shows that it bifurcates the information which is within the personal knowledge of the deponent and what is true according to his information.

8. The verification found at the end at page 33 of the paper Book reads :

"I, K. Anandagopan, son of K. K. Kesava Panicker, aged 50 years, residing at 'Chaithanya', Vallamkulam P.O., Thiruvalla, the petitioner herein, do hereby declare that the averments in paragraph 1 to 25 are true to the best of my knowledge, information and belief."

9. Order 6 Rule 15 C.P.C. reads :--

"15. Verification of Pleadings.—(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed."

It would be noticed that the verification at page 33 of the Paper Book does not contain the place and date of verification. Similarly the verification does not state what are the material facts which are within the personal knowledge of the petitioner and what he believes to be true according to his information.

10. In *F. A. Sapa v. Signora* (AIR 1991 SC 1557) the Supreme Court considered the effect of defective verification. After considering the decisions in *Murarka Radhey Shyam v. Roop Singh Rathore* (AIR 1964 SC 1545), *Samant N. Balkrishna v. George Fernandex* (AIR 1969 SC 1201) and other decisions, summarised the finding as follows :

"It is thus clear from this decision which is binding on us that mere defect in the verification of the election petition is not fatal to the maintainability of the petition and the petition cannot be thrown out solely on that ground. As observed earlier since Section 83 is not one of three provisions mentioned in Section 86(1), ordinarily it cannot be construed as mandatory unless it is shown to be an integral part of the petition under Section 81."

In para. 27 of the judgment the Supreme Court observed thus :

"From the text of the relevant provisions of the R. P. Act, Rule 94A and Form 25 as well as Order 6, Rule 16 and Order 19, Rule 3 of the Code and the resume of the case law discussed above it clearly emerges (i) a defect in the verification if any, can be cured, (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true, (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same, and (iv) the defect in the affidavit in the prescribed Form 25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, under Section 81(3) as indicated earlier. Similarly the Court would have to decide in each individual case whether the schedule or annexure referred to in Section 83(2) constitutes an integral part of the election petition or not; different considerations will follow in the case of the former as compared to those in the case of the latter."

The above conclusions will show that a defect in verification, if any, can be cured and that if the respondent desires better particulars he can call for the same.

11. In view of the above ruling of the Supreme Court that the mere defect in verification of the

pleadings as such is not fatal and can be cured, the preliminary objection raised regarding the defect in verification of the pleadings should not lead to the dismissal of the Election Petition at the threshold. This is a defect which can be cured.

12. Defect in the affidavit : As I had observed, the Election Petition is dated 19-5-1998, signed by petitioner and the counsel (page 32 of the Paper Book). The affidavit in support of this Election Petition, contained in pages 34 to 36 of the Paper Book, is sworn before Sri S. Siri Jagan, Advocate & Notary, on 18th May, 1998 at his Office at Ernakulam. It carries seal of Notary and adhesive stamp. The affidavit is signed in each page by the petitioner. It also contains the signature of Notary in all pages. Clause (a) of the affidavit affirms that the statements made in paragraphs 17 and 18 of the Election Petition regarding commission of corrupt practices is borne out by Annexures VII and VIII and are true according to petitioner's information. Clause (b) swears that the statements made in paragraph 24 of the Election Petition relating to incurring of expenditure are also true to the petitioner's information. In clause (c) it is stated that the statements relating to commission of corrupt practice contained in paragraphs 19, 20 and 21 of misusing, religion for the prospects of the 1st respondent are based on petitioner's knowledge. In clause (d) it is stated that petitioner relies on Annexures I to XIII and witnesses to substantiate the statements made in paragraphs 1 to 25 of the Election Petition. It will be noticed that the petitioner has clearly averred in the affidavit affirming what are the material facts alleged from his personal knowledge and what are the material facts which are true according to his information.

13. The attack made against the above affidavit by the 1st respondent is that it is not the one as contemplated by Order 19 CPC read with the provisions in the Kerala Civil Rules of Practice. Order 19, Rule 3 reads :

"3. Matters to which affidavits shall be confined.—(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted : provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same."

Rule 52 of Civil Rules of Practice, Kerala states that every affidavit shall clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief, as in Form No. 17. Form No. 17 is as follows :

#### FORM NO. 17

##### (Rule 52)

##### Concluding Portion of Affidavit

"What is stated above in paragraphs ..... are true to my knowledge and what is stated in paragraphs ..... are stated on information and belief derived from records and/or obtained from ..... and I believe the same to be true."

The last sentence in the affidavit at page 36 of the Paper Book says : "All the facts stated above are true". Obviously this is not in accordance with Rule 52 and Form 17 mentioned above. But the proviso to Sec. 83(1) lays down that the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Rule 94A of the Conduct of Elections Rules framed under the R.P. Act lays down that the affidavit referred to in the proviso to sub-sec. (1) of Sec. 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25. A glance at Form 25 framed under Rule 94A shows that it provides for clauses (a) and (b)—clause (a) referring to what is sworn from petitioner's personal knowledge; and clause (b) referring to what is sworn as true according to petitioner's information. Thus Sec. 83 of the R. P. Act mandates that it shall be accompanied by an affidavit and Rule 94A of the Conduct of Elections Rules lays down that it shall be in Form 25. There is obviously a change in the wordings between Rule 52 of the Civil Rules of Practice read with Form 17 and Rule 94A read with Form 25 of the Conduct of Elections Rules. If an affidavit does not conform to Form 25, the same is likely to be found defective with the risk of the Election Petition itself being thrown out. In as much as Rule 94A of the Conduct of Elections Rules mandates as to the form in which the accompanying affidavit should be made (Form 25) and the present affidavit conforms to those requirements, it cannot be attacked on the ground that it does not conform to attestation as required by provisions of Order 19 CPC and the relevant rules of the Civil Rules of Practice.

14. The most important aspect to be considered is whether the affidavit in support of the Election Petition and the Election Petition are integral parts of the same document. In *Shipra v. Shanti Lal Khoiwal* (AIR 1996 SC 1691) the Supreme Court

held that the affidavit referred to in the proviso to Sec. 83(1) forms part of the Election Petition. Their Lordships relied on Sapa's Case (AIR 1991 SC 1557) and proceeded to state that the election petition is in truth and reality one document, consisting of two parts—one being the election petition proper and the other being the affidavit referred to in the proviso to Sec. 83(1) of the R. P. Act. So, the copy of the election petition required to be held under Sec. 81(3) read along with Section 83 will include a copy of the affidavit (See *M. Kamalam v. Dr. V. A. Syed Mohammed* (AIR 1978 SC 840)). In the present case it is pointed out that the affidavit being dated 18th May, 1998 and the Election Petition being dated 19th May, 1998, both cannot constitute one document with two parts as stated in Shipra's case (AIR 1996 SC 1691) and hence the Election Petition is liable to be dismissed under Sec. 86 for violation of the mandate of Sec. 81 of the R.P. Act. As 'Corrupt practices' as defined in Sec. 123 of the R. P. Act is relied on as the basis to challenge the election of the 1st respondent, it is mandatory that the Election Petition should be supported by an affidavit; as pointed out by their Lordships in Shipra's Case affidavit as well as election petition forms two parts of the same document. The question that arises in this case is whether the Election Petition is defective for the reason of different dates being shown in the affidavit and the Election Petition. What is intended by the proviso is that the affidavit must solemnly affirm the allegations of corrupt practice and particulars thereof mentioned in the Election Petition. I have already referred to the contents of the affidavit which affirms the statements in various paragraph of the Election Petition dated 19th May, 1998. This is sworn to on the previous day, i.e. 18th May, 1998. In the above circumstances, it cannot be stated that the affidavit accompanying the Election Petition is a different part of the same document. On 18th May when the election petitioner affirmed before the Notary the allegations in the petition (that was signed only on the next day), was solemnly affirming to the material particulars in the Election Petition which had not been signed by him. Learned Counsel for petitioner submitted that there is nothing in the Rules to suggest that the petition and affidavit should be signed on the same day and no-one can take any exception to this submission. If the Election Petition was signed on 18th and the affidavit on the 19th, the validity of the affidavit could not have been challenged. But in the present case it is the other way so that when the petitioner solemnly affirmed the affidavit, the Election Petition was not a signed document. This is sought to be explained by the petitioner by the alleged practice of the registry, viz. petitioner should sign the Election Petition before the Joint Registrar and therefore it could not have been signed when the affidavit was signed before the Notary. But the petitioner was

not able to point out any specific rule in the Kerala High Court Rules requiring the petitioner to sign the Election Petition before the Joint Registrar. The Rules only refer to presentation of Election Petition before Registry. In fact, in *Sheodan Singh v. Mohan Lal* (AIR 1969 S.C. 1024) it was pointed out that Election Petition can be presented by advocate's clerk before the registry in the immediate presence of the petitioner. Therefore, the affidavit accompanying the Election Petition in this case appears to be defective, as it has affirmed the allegations in a petition which was not in existence on that day.

15. Ext. B1 is copy of Election Petition served on the 1st respondent. At page 33 there is an endorsement that it is true copy of the Election Petition and is signed by petitioner and his advocate. But the copy of affidavit accompanying the petition is not certified to be a true copy. It was held in *Kamalam's Case* (AIR 1978 SC 840), referred to earlier, that the attestation as true copy in the affidavit is sufficient and there need not be separate attestation as true copy in Election Petition. The affidavit and the election petition are two parts of one document. But in this case they are of different dates. As corrupt practice is alleged, the affidavit is a very important and integral part of the Election Petition. The Supreme Court considered this question in Shipra's case (AIR 1996 SC 1691) where also copy of the affidavit filed in support of the election petition supplied to the respondent did not contain verification by the Notary. In this case the affidavit served on 1st respondent appears to be a copy of the original affidavit. At page 36 there is seal of the Notary and his signature. It is not certified as a true copy by the petitioner. Sec. 81(3) of the R. P. Act requires that election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. In Shipra's case the Supreme Court laid down that strict compliance must be observed and every copy should be signed and attested by petitioner. The decision in Shipra's case (AIR 1978 SC 840) was affirmed by the Supreme Court in *Harcharan Singh Josh v. Hari Kishan* (AIR 1996 SC 3350). In this case copy of affidavit is not attested as true copy. Even if we follow the reasoning in *Kamalam's case* (AIR 1978 SC 840), there is difficulty for the petitioner because the affidavit and Election Petition are not signed on the same day. In this case, it would mean allegations of corrupt practice in Election Petition are not supported by an affidavit as envisaged in the proviso to Sec. 83(1) and Sec. 81(3) of the R.P. Act. An election petition proper must satisfy the proviso to Sec. 83(1) and if it does not conform to the above requirement, it offends Sec. 81, because it cannot be considered to be an Election Petition properly filed. Therefore, I am

of the view that as the petitioner has not verified that the affidavit served on the 1st respondent is a true copy of the affidavit filed by him, it offends Sec. 81(3) of the R. P. Act and the election petition is liable to be dismissed at the threshold for want of proper affidavit.

16. Another ground of attack against the affidavit is that it does not disclose the source of information. It is contended that Rule 94A of the Conduct of Elections Rules read with Form 25 has to be read along with Order 19 Rule 3 and Order 6 Rule 15. The affidavit in this case only says what is true to petitioner's knowledge and which are true based on his information. There is no statement as to whether he believes it to be true. He has not disclosed the source of information also. In Sapa's case (AIR 1991 SC 1557) the Supreme Court held that if, however, the affidavit or the schedule or annexure form an integral part of the election petition itself, strict compliance must be ensured. In this case, the Election Petition sets out in detail the corrupt practices and is sworn to by affidavit in Form 25. Paragraph 27 of the judgement in Sapa's case extracted supra held that any defect in affidavit can be cured unless such amendments are hit by Sec. 81(3) of the R. P. Act.

17. In view of the above discussion, under issue No. 1 it is found that the Election Petition is defective for non-conformity with Sec. 83(1). The affidavit filed in support of the petition also is defective because it affirms the allegations in the Election Petition that was not in existence on that day. It is further held that the Election Petition is bad for mischief of Section 81(3) of the R. P. Act in that the copy served on the 1st respondent was not attested by petitioner to be a true copy.

18. Issue No. 2 :—Non-disclosure of cause of action: Sec. 86(1) of the R.P. Act states that the High Court shall dismiss an election petition which does not comply with the provisions of Sec. 81 or Sec. 82 or Sec. 117. It significantly omits Sec. 83. However, it is not disputed that courts have held that an election petition which does not conform to Sec. 83 cannot be termed as an election petition at all and the same can be dismissed under the provisions of the Code of Civil Procedure even at the threshold and not under Sec. 36(1) of the R. P. Act. Sec. 83(1)(a) mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies; clause (b) lays down that it shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The 1st respondent alleges that in this case the election petition does not contain a concise statement of all the

material facts in support of the allegations. Counsel for 1st respondent relied on Azhar Hussain v. Rajiv Gandhi (AIR 1986 SC 1253) in support of the above argument. In para 11 of the above decision, it was held that an election petition can be summarily dismissed if it does not furnish cause of action, in exercise of the powers under the Code of Civil Procedure. In fact the Supreme Court even went further and added that this power is conferred on courts to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of court. To quote Their Lordships :

"The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose."

In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Sec. 83(1)(a). Therefore, their Lordships held that an election petition can be and must be dismissed if it suffers from any such vice. The case of the 1st respondent is that in respect of the appeal made by the Metropolitan at the Maramon convention, no facts are disclosed on the basis of which petitioner came to the conclusion that it was done with the consent of the 1st respondent. Similarly, the petition does not disclose what are the actual words used in the speech. It only states about the report in Mathrubhumi daily which is annexed. So also, there is no factual basis in the petition to show that statement of T.D. Mathew, Executive Member, C.S.I. Madhya Kerala Mahadavaka, Annexure-VIII) was with the consent of 1st respondent. Similarly, the petition does not disclose that the photographs published in Malayala Manorama daily showing the 1st respondent standing with Madathipathi of Kidangannoor Vijayanadasramam and Matha Guru Poornimayi and with paster T. S. Abraham (Annexures IX and X), was with the consent of 1st respondent. So also no facts are disclosed to show that Smt. Mary Thomas Madolil, President, District Panchayat, Pathanamthitta addressed letters to voters on behalf of the 1st respondent with his consent. In Azhar Hussain v. Rajiv Gandhi (AIR 1986 SC 1253) referred above, dealing with consent, the Supreme Court stated :

"31. . . . . The essence of the charge is that this book containing alleged objection-

able material was distributed with the consent of the respondent. Even so strangely enough even a bare or bald averment is not made as to :

- (i) whom the returned candidate gave consent;
- (ii) in what manner and how; and
- (iii) when and in whose presence the consent was given,

to distribute these books in the constituency."

Sec. 123(3) of the R. P. Act speaks about the appeal by a candidate or his agent or by any other person with the consent of a candidate or his agent which alone will constitute the offence. In *Manohar Joshi v. N. B. Patil* (AIR 1996 SC 796) the Supreme Court has pointed out that implied consent of candidate cannot be read into ground in S. 100(1)(b) or definition of corrupt practice to dispense with clear pleading and proof of candidate's or his election agent's consent. The Election Petition in this case, does not disclose on what basis the petitioner made allegations that the above-named persons made the statement with the consent of the 1st respondent or his election agent. Hence even if all the allegations in the Election Petition are accepted, the gravamen of the said charge cannot be proved and non-disclosure of material facts will affect the validity of the petition.

19. Another defect pointed out by the 1st respondent in the Election Petition is that the allegations against irregularity in counting are not specific and no complaints were made at the time of counting. In *Arun Kumar Bose v. Mohd. Furkan Ansari* (1984 (1) S.C.C. 91) the Supreme Court considered what are material facts regarding the irregularities in counting and observed thus :

"So far as averment in paragraph 9(i) of the election petition is concerned, we find that the number of ballot papers alleged to have been wrongly rejected has been furnished, the counting table number has been given, the booth number has also been disclosed and the ground for rejection has even been pleaded. Respondent No. pleaded that the particulars of the ballot papers could not be obtained as during counting they were not shown."

In *Bhabhi v. Sheo Govind* (AIR 1975 SC 2117) and *Satyanarain Dudhani v. Uday Kumar Singh* (AIR 1993 SC 367) the apex court has pointed out that the prayer for recounting cannot be allowed on vague allegations. Before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported

by adequate statements of material facts. In *M.R. Gopalakrishnan v. Thechad v. Prabhakaran* (1995 Supp (2) SCC 101) the Supreme Court stated thus :

"The rules provide adequate opportunity to a candidate, his election agent and counting agent to have a watch over the counting process before the result is declared and if they raise any objection as to the validity or otherwise of any ballot paper and if the said objection is improperly rejected, the candidate, his counting and election agents are well informed of the nature of the objection that was raised with regard to the ballot papers and make a concise statement of material facts in the election petition in relation thereto. Therefore, the secrecy of the vote has to be maintained and a demand of re-count should not ordinarily be granted unless the election petitioner makes out a *prima facie* case with regard to the errors in the counting and is able to show that the errors are of such magnitude that the result of the election of the returned candidate is materially affected."

20. In this case the allegations against the irregularities in counting are contained in paragraphs 5 to 16. They are :

- (1) Many ballot papers on which votes were cast in favour of 5th respondent were included in the bundles supposed to contain the ballot papers on which votes were cast for the 1st respondent.
- (2) In many of the bundles which were expected to contain only ballot papers on which votes were cast in favour of 1st respondent, two or three were those on which votes had been cast in favour of 5th respondent. This was in 104 Kayamkulam Legislative Assembly Segment and a request for re-counting was rejected.
- (3) In 108 Chengannur Legislative Assembly Constituency, many invalid votes were treated as valid in favour of 1st respondent and the counting officials acted in an arbitrary manner, in spite of protest being raised by the counting agents of 5th respondent.
- (4) Bundling of ballot papers was not correctly done. Some of the bundles of ballot papers on which votes were cast in favour of the 1st respondent contained only 23 instead of 25 whereas bundles of ballot papers on which votes were cast in favour of 5th respondent contained 27



or 28 ballot papers while only 25 ballot papers were expected to be there in each bundle. A request for recounting made to the Returning Officer was rejected (Annexure-IV).

- (5) Inside the counting hall, penchmen of the 1st respondent formed a crowd, forcefully keeping away the counting agents of the 5th respondent from the counting table.
- (6) Counting process was not completed in conformity with the statutory provisions.
- (7) A written complaint was made to the District Collector by 5th respondent on the eve of counting, against change of a number of counting officials, which was rejected. This change of personnel was effected with a view to appoint personnel favourable to 1st respondent.

21. The Supreme Court has observed that allegations and complaints against counting should be specific and must contain the material facts disclosing a cause of action, counting-table number, number of ballot papers alleged to have been wrongly rejected, names of counting officials etc. The allegations made in paragraphs 5 to 15 of the Election Petition are very vague without details so that the 1st respondent is disabled from effectively answering them. The names of the counting supervisors or counting assistants who are supposed to have helped the 1st respondent are not mentioned. It does not mention how they were interested in the 1st respondent. Their names or the organisation to which they belong are not mentioned in the Election Petition. Apart from saying that many invalid votes were taken as valid votes of the 1st respondent, even the approximate number of such votes are not mentioned. The serial number of such ballot papers are not mentioned. Therefore, the allegations are vague, lack precision and are not capable of being effectively answered. In short, they do not disclose a valid cause of action.

22. Allegations against expenditure incurred.— Paragraphs 24 and 25 of the Election Petition contain complaints against accounts submitted by the 1st respondent in connection with expenditure. It is pointed out that in Annexure XII, true copy of Abstract Statement of Election Expenses, the 1st respondent has not included several items of expenditure incurred by him, his election agent or others on his behalf with his consent. Certain examples given are the following :

- (1) He has shown a 'nil' entry in relation to expenditure incurred by him for hiring of campaign offices. He had hired a

building at Chengannur as Central Election Committee office, and buildings/rooms as election offices in all the seven Assembly segments and in all panchayats. (No details such as number of the rooms, rent, name of the landlords etc. are mentioned).

- (2) In the accounts, no expenditure is shown as incurred towards printing of personal history. (No details as to such leaflets containing personal history are mentioned.)
- (3) The expenditure shown in connection with publication of advertisements on propaganda for public meetings and towards hiring charges of places for public meetings are far below the actual expenses met by 1st respondent. (Again, no details or specific data of the same are given).
- (4) The expenditure incurred by 1st respondent on V.I.P. visits is more than Rs. 53,150/- shown in the Abstract Statement of Election Expenses—the petitioner does not state how this figure is incorrect.
- (5) Expenditure incurred on printing of posters shown by the 1st respondent is far below the expenses actually met by him—Hereagain no details are forthcoming.
- (6) The amount spent towards telephone charges in the Central Election Committee office and Election Committee Offices are not included in Annexure-XII. (The number of the telephones and the amount paid by 1st respondent are not stated).
- (7) Expenditure incurred for construction of gates and arches and towards banners and boards are not included in Annexure-XII—No specific details are given.
- (8) The total expenses in connection with the election had exceeded the prescribed maximum. (Petitioner does not state what was the total expenditure incurred and how much was in excess of the maximum).

Thus it will be seen that all the allegations in para 24 of the Election Petition relating to election expenses are too vague, unspecific and without details and are not capable of being effectively answered by 1st respondent.

23. In para 25 of the Election Petition there is an allegation that the 1st respondent got printed and published many election pamphlets and posters which do not bear on its face the names and address of the Printers and Publishers and he had not complied with the provisions of Sec. 127A(2) of the R. P. Act. The details of such pamphlets and posters are not mentioned and they are not exhibited. The allegation is too vague and is not capable of being effectively answered:-

24. An election petition must disclose and contain statement of material facts as required by Sec. 83(1)(a) of the R.P. Act. The Election Petition does not contain a concise statement of material facts relating to corrupt practices alleged, irregularities in counting and also relating to election expenses. Therefore, I find that the Election Petition is liable to be dismissed for want of concise statement of material facts and non-disclosure of cause of action.

25. C.M.P. No. 4642 of 1998 is allowed for the reasons stated above. The Election Petition is not maintainable for non-compliance with Sec. 81(3) and 83(1) of the R.P. Act and it is dismissed under Sec. 86(1) of the R.P. Act. There will be no order as to costs.

The Registrar shall intimate the substance of this decision to the Election Commission and the Speaker, Lok Sabha without delay and shall send to the Election Commission an authenticated copy of this decision as soon as possible, as required under Sec. 103. of the R.P. Act.

Sd./-

S. KRISHNAN UNNI, Judge

#### APPENDIX

Respondent's Exts :--

Ext. B1—Copy of Election Petition served on the 1st respondent.

[No. 82/KL-HP/3/98]

By order,

BABU RAM, Secy.